

Honorable Karen A. Overstreet
Chapter 11

FILED
Western District of Washington
at Seattle

MAY -8 2013

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

**MARK L. HATCHER, CLERK
OF THE BANKRUPTCY COURT**

In re

CONSOLIDATED MERDIAN FUNDS, a/k/a
MERIDIAN INVESTORS TRUST, et al.,

DEBTOR

)
)
) Consolidated Case No. 10-17952
)
)
)
) DECLARATION OF DARREN BERG
)
)
)
)
)

The undersigned hereby states and declares as follows:

1. I am the founder of the Meridian entities central to the above-captioned dispute and I served as the Chief Executive Officer of those entities for more than 20 years. I have personal knowledge of the matters at issue in Moss Adams, LLP's Motion for Reconsideration.
2. Trustee Mark Calvert (**TRUSTEE CALVERT**) has mislead the Court regarding his access to Meridian's records. Having parlayed this false testimony into a finding of contempt Moss Adams, the record begs to be corrected.

1 3. Meridian operated a paperless office. Paper files were promptly reduced to digital images with
2 only the most recent files being retained in paper format in Meridian's Seattle business office. Most paper
3 files were retained offsite in an archive at Washington Archive Management.

4 4. On August 27, 2010, the date of the FBI's raid on Meridian's Seattle business office, only a
5 small percentage of Meridian's paper files were situated in Meridian's offices and the FBI seized only
6 those files. Notably, all files seized had a digital counterpart; copies of all appraisals, title reports,
7 processing and closing documents, credit reports, servicing records and all other information relative to
8 the file was saved in digital format on Meridian's network. The paper files held in archive at Washington
9 Archive Management, representing the vast majority of Meridian's paper files, were not seized by the FBI
10 on August 27, 2010. In fact, those files were not seized until months later.

11 5. The amount of digital data in this case was staggering. Owing largely to Meridian's imaging
12 and digital storage protocols, Meridian's electronically stored information (the ESI) totaled 13.5 terabytes
13 of data stored on 263 hard drives. If printed, this data would equate to approximately 675 million pages-
14 enough to fill a 15,000 square foot building to a height of 16 feet.

15 6. The ESI in this case, in addition to including QuickBooks data and loan servicing data on all
16 Meridian entities and investment funds, included digital images such as copies of all mortgage files, loan
17 servicing ledgers, trial balances, A/R ageing, appraisals, title reports, credit reports, images of mortgages,
18 deeds of trust, promissory notes, closing statements, etc. Hard drives on Meridian's network were used as
19 electronic filing cabinets with folders created to correspond with their paper file counterparts and
20 facsimiles of the contents of those paper files kept in digital files. This means that any paper file could be
21 re-created by simply printing out its contents from the ESI.

22 7. All information provided to Moss Adams, LLP in the furtherance of any engagement-
23 specifically including copies of trial balances-was retained in digital form, saved in a folder labeled to
24 correspond with the engagement on the hard drive labeled Cora. By referring to these folders, Trustee
25 Calvert could see for himself information, such as trial balances, provided from Meridian to Moss Adams
26 in the furtherance of any audit.

27 8. The representations I make in this declaration regarding the ESI, how it was maintained and
28 what it contained, can be proven by consulting the complete forensic image created by Lighthouse e
29 Discovery on July 20, 2010 at my request.
30

9. There were two bankruptcy trustees appointed in this matter, Trustee Calvert and Trustee Diana Carey (**TRUSTEE CAREY**). Between them, they controlled all of my assets both business and personal.

10. On August 24, 2010, Trustee Calvert and Trustee Carey entered into an information sharing agreement that granted Trustee Calvert full access to all of the ESI, irrespective of whether or not Trustee Calvert served as the trustee of the entity to which the ESI related.¹ With this agreement in place, Trustee Calvert enjoyed unfettered access to all QuickBooks data and to all information relative to all investment funds, to Meridian, and to all communications with, and transmissions of information to, Moss Adams, LLP.

11. The FBI did not seize the ESI. Rather, it merely copied the information, leaving the servers and hard drives as was, where was.² But for a brief period of time on August 27, 2010 (no more than 12 hours), Trustee Calvert has enjoyed unobstructed access to the ESI since the execution of the information sharing agreement on August 24, 2010.

12. Trustee Calvert did not re-create information from bank statements because he lacked access to trial balances. To the contrary, he did so to **confirm the accuracy** of trial balances. Based on information and belief, I assert that Trustee Calvert did not complete a re-creation of the asset sides of the balance sheets at issue here because, in doing so, he came to conclude that such a re-creation would disprove the claims he makes of a long running Ponzi scheme, allegation around which his civil suit against Moss Adams orbits.

13. Moss Adams did not request this declaration. Indeed, I have had no communications with Moss Adams or anyone representing Moss Adams relative to these matters. I submit this declaration of my own initiative to right an unjust ruling against Moss Adams obtained through perjury.

I declare under penalty of perjury that the forgoing is true and correct. Dated this 6th day of May, 2013

Frederick Darren Berg

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¹ See exhibit A attached hereto, FBI report dated August 26, 2010 confirming information sharing agreement.

² See exhibit B, email from Trustee Carey dated August 27, 2010 confirming that, following the Government's raid of August 27, 2010, servers were not disturbed.

CERTIFICATE OF SERVICE

I hereby certify that on May 6th, 2013 I mailed, by United States Postal service with prepaid postage affixed, exact copies of the foregoing document to the following parties:

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Osborn Machler
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Seattle, WA 98121

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Steven W. Fogg
Corr Cronin Michelson Baumgardner & Preece LLP
1001 Fourth Ave., Suite 3900
Seattle, WA 98154

Dated this 6th day of May, 2013


Marlene Bamford

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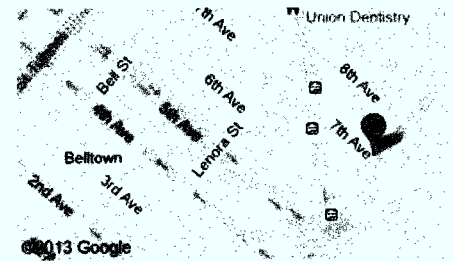
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